



Department of Energy
Washington, DC 20585

December 30, 2016

Mr. Benjamin Good
American Civil Liberties Union
125 Broad Street - 18th Floor
New York, NY 10004

Via email to: bgood@aclu.org

Re: HQ-2016-00656-F

Dear Mr. Good:

This is the final response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You requested:

- (1) policies, standards, and guidance related to prepublication review;
- (2) final legal analyses of past, present, or proposed prepublication-review requirements;
- (3) final decisions of officials conducting prepublication reviews;
- (4) correspondence with former agency employees (or their representatives) who have submitted materials for prepublication review since January 1, 2009;
- (5) statistics relating to prepublication review, including but not limited to information documenting the total number of individuals who have submitted works for review, the total number of works submitted for review, the total number of submissions approved without change, the total number of submissions returned with proposed redactions or other modifications, the total number of pending submissions, and the duration of prepublication review processes;
- (6) titles, subject matters, and dates of works submitted for prepublication review; and
- (7) information about enforcement proceedings instituted or contemplated on the basis of violations of prepublication-review requirements, including breach-of-contract actions, agency administrative proceedings, and civil or criminal litigation.

To determine jurisdiction of your request, DOE queried the following Field Offices:

- Chicago Office
- Idaho Operations Office
- Oak Ridge Office
- Naval Reactors Laboratory Field Office



- Carlsbad Field Office
- Golden Field Office
- Southwestern Power Administration
- Western Area Power Administration
- Strategic Petroleum Reserve Project
- National Energy Technology Laboratory in Pittsburgh/Morgantown
- Bonneville Power Administration
- Environmental Management Consolidated Business Center
- Office of River Protection / Richland Operations Office
- Savannah River Site
- Office of Scientific and Technical Information
- National Nuclear Security Administration

DOE also queried the following Headquarter Offices:

- Office of General Counsel
- Office of History and Heritage Resources
- Office of Environment, Health, Safety & Security
- Office of Intelligence and Counterintelligence

The following Offices determined no jurisdiction:

- Chicago Office
- Idaho Operations Office
- Oak Ridge Office
- Naval Reactors Laboratory Field Office
- Carlsbad Field Office
- Golden Field Office
- Southwestern Power Administration
- Western Area Power Administration
- Strategic Petroleum Reserve Project
- Bonneville Power Administration
- Environmental Management Consolidated Business Center
- Office of River Protection / Richland Operations Office
- Savannah River Site
- Office of Scientific and Technical Information
- Office of General Counsel
- Office of History and Heritage Resources

Thus, your request was assigned to the National Nuclear Security Administration (NNSA), the National Energy Technology Laboratory (NETL), the Office of Intelligence and Counterintelligence (IN), and the Office of Environment, Health, Safety & Security (AU) to conduct a search of their files for responsive documents. DOE started its search on August 12, 2016, which is the cutoff date for responsive documents.

NNSA, NETL, IN, and AU have completed their searches. NNSA has identified one (1) responsive document and NETL has identified twenty-one (21) responsive documents. The documents are being released as described in the accompanying index. IN and AU have identified the same two (2) responsive documents that are publicly available online. The hyperlinks are also being provided to you in the accompanying index.

Upon review, DOE has determined that certain information should be withheld in the documents pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6).

Exemption 6 is generally referred to as the “personal privacy” exemption; it provides that the disclosure requirements of FOIA do not apply to “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” In applying Exemption 6, the DOE considered: 1) whether a significant privacy interest would be invaded; 2) whether the release of the information would further the public interest by shedding light on the operations or activities of the Government; and 3) whether in balancing the privacy interests against the public interest, disclosure would constitute a clearly unwarranted invasion of privacy.

The information withheld under Exemption 6 consists of a personal e-mail address. This information qualifies as “similar files” because it is information in which an individual has a privacy interest. Moreover, releasing the information could subject the individuals to unwarranted or unsolicited communications. Since no public interest would be served by disclosing this information, and since there is a viable privacy interest that would be threatened by such disclosure, Exemption 6 authorizes withholding the information. Therefore, we have determined that the public interest in releasing this information does not outweigh the overriding privacy interests in keeping this information confidential.

This satisfies the standard set forth in the Attorney General’s March 19, 2009, memorandum that the agency is justified in not releasing material that the agency reasonably foresees would harm an interest protected by one of the statutory exemptions. This also satisfies DOE’s regulations at 10 C.F.R. § 1004.1 to make records available which it is authorized to withhold under 5 U.S.C. § 552 when it determines that such disclosure is in the public interest. Accordingly, we will not disclose this information.

This decision, as well as the adequacy of the search, may be appealed within 90 calendar days from your receipt of this letter pursuant to 10 C.F.R. § 1004.8. Appeals should be addressed to Director, Office of Hearings and Appeals, HG-1, L’Enfant Plaza, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585-1615. The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. You may also submit your appeal by e-mail to OHA.filings@hq.doe.gov, including the phrase “Freedom of Information Appeal” in the subject line. The appeal must contain all the elements required by 10 C.F.R. § 1004.8, including a copy of the determination letter. Thereafter, judicial review will be available to you in the Federal District Court either (1) in the district where you reside, (2) where you have your principal place of business, (3) where DOE’s records are situated, or (4) in the District of Columbia.

You may contact DOE's FOIA Public Liaison, Alexander Morris, FOIA Officer, Office of Public Information, at 202-586-5955, or by mail at MA-46/Forrestal Building 1000 Independence Avenue, S.W. Washington, D.C. 20585 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you have any questions about the processing of your request or this letter, you may contact Ms. Anjelica Ruda or me at:

MA-46/Forrestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585
(202) 586-1355

I appreciate the opportunity to assist you with this matter.

Sincerely,



Alexander C. Morris
FOIA Officer
Office of Public Information

Enclosures

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The National Nuclear Security Administration has completed its search and identified one (1) document responsive to your request.

- One (1) document *is being released in its entirety.*

The National Energy Technology Laboratory has completed its search and identified twenty-one (21) documents responsive to your request.

- Five (5) documents *are being withheld in part pursuant to Exemption (b)(6).* Exemption 6 information consists of a personal e-mail address.
- Sixteen (16) documents *are being released in their entirety.*

The Office of Intelligence and Counterintelligence and the Office of Environment, Health, Safety & Security have completed their searches and identified the same two (2) documents responsive to your request.

- Two (2) documents *are publicly available online*.
 - DOE Order 475.2B Identifying Classified Information can be found at:
<https://www.directives.doe.gov/directives-documents/400-series/0475.2-BOrder-b>
 - 10 Code of Federal Regulations Part 1045, Nuclear Classification and Declassification can be found at:
http://www.ecfr.gov/cgi-bin/textidx?c=ecfr&tpl=/ecfrbrowse/Title10/10cfr1045_main_02.tpl